

**U.S. Department of Justice**



*United States Attorney  
Western District of Pennsylvania*

*U.S. Post Office & Courthouse  
700 Grant Street  
Suite 400  
Pittsburgh, Pennsylvania 15219*

412/644-3500

September 15, 2005

John Zagari, Esquire  
Lawyers Building, Suite 1609  
428 Forbes Avenue  
Pittsburgh, PA 15219

Re: United States of America v.  
Glen Wagner and Wagner Excavation Services, Inc.  
Criminal No. 05-318

Dear Mr. Zagari:

This letter sets forth the agreement by which your clients, Glen Wagner and Wagner Excavation Services, Inc., will enter pleas of guilty in the above-captioned case. The letter represents the full and complete agreement between Glen Wagner and Wagner Excavation Services, Inc. and the United States Attorney for the Western District of Pennsylvania. The agreement does not apply to or bind any other federal, state, or local prosecuting authority.

A. The defendants, Glen Wagner and Wagner Excavation Services, Inc., agree to the following:

1. Glen Wagner and Wagner Excavation Services, Inc. will each enter a plea of guilty to Count One of the Information at Criminal No. 05-318, charging them with violating 29 U.S.C. § 666(e) and 18 U.S.C. § 2, pursuant to Rule 11 of the Federal Rules of Criminal Procedure. A draft copy of the Information is attached hereto as Exhibit "A".
2. Glen Wagner and Wagner Excavation Services, Inc. will pay mandatory restitution under the Victim-Witness Protection Act, 18 U.S.C. §§3663, 3663A and 3664, to the victims and/or other persons or parties authorized by law in such amounts, at such times, and according to such terms as the Court shall direct.

**LIMITED OFFICIAL  
USE**



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3. Upon request of the United States, Glen Wagner and Wagner Excavation Services, Inc. agree to provide all information regarding their income, assets and financial status.
4. If the Court imposes a fine or restitution as part of a sentence of incarceration, Glen Wagner agrees to participate in the United States Bureau of Prisons' Inmate Financial Responsibility Program, through which 50% of his prison salary will be applied to pay the fine or restitution.
5. At the time Glen Wagner and Wagner Excavation Services, Inc. enter their pleas of guilty, Glen Wagner will deposit a special assessment of \$10.00 and Wagner Excavation Services, Inc. will deposit a special assessment of \$50.00 in the form of cash, or check or money order payable to "Clerk, U.S. District Court". In the event that sentence is not ultimately imposed, the special assessment deposits will be returned.
6. Glen Wagner and Wagner Excavation Services, Inc. waive any former jeopardy or double jeopardy claims they may have in or as a result of any related civil or administrative actions.
7. Glen Wagner and Wagner Excavation Services, Inc. waive the right to take a direct appeal from their convictions or sentences under 28 U.S.C. §1291 or 18 U.S.C. §3742, subject to the following exceptions:
  - (a) If the United States appeals from the sentence, Glen Wagner and Wagner Excavation Services, Inc. may take a direct appeal from the sentence.
  - (b) If the sentence exceeds the applicable statutory limits set forth in the United States Code.

Glen Wagner and Wagner Excavation Services, Inc. further waive the right to file a motion to vacate their sentences, under 28 U.S.C. §2255, attacking their convictions or sentences, and the right to file any other collateral proceeding attacking their convictions or sentences.

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B. In consideration of and entirely contingent upon the provisions of Parts A and C of this agreement, the United States Attorney for the Western District of Pennsylvania agrees to the following:

1. The United States Attorney retains the right of allocation at the time of sentencing to advise the sentencing Court of the full nature and extent of the involvement of Glen Wagner and Wagner Excavation Services, Inc. in the offense charged in the Information and of any other matters relevant to the imposition of fair and just sentences.
2. The United States Attorney will take any position she deems appropriate in the course of any appeals from the sentences or in response to any post-sentence motions.

C. Glen Wagner and Wagner Excavation Services, Inc. and the United States Attorney further understand and agree to the following:

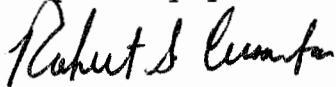
1. The penalty that may be imposed upon Glen Wagner is:
  - (a) A term of imprisonment of not more than six months;
  - (b) A fine of \$250,000.00;
  - (c) A term of supervised release of one year;
  - (d) A special assessment under 18 U.S.C. §3013 of \$10.00;
  - (e) Mandatory restitution under the Victim-Witness Protection Act, 18 U.S.C. §§3663, 3663A and 3664.
2. The penalty that may be imposed upon Wagner Excavation Services, Inc. is:
  - (a) A fine of \$500,000.00;
  - (b) A term of supervised release of one year;
  - (c) A special assessment under 18 U.S.C. §3013 of \$50.00;
  - (d) Mandatory restitution under the Victim-Witness Protection Act, 18 U.S.C. §§3663, 3663A and 3664.

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3. The Court shall determine the victims and/or other persons or parties who will receive restitution as authorized by law.
4. The parties stipulate that the appropriate criminal fine for Glen Wagner is \$25,000.00 and an additional \$25,000.00 for Wagner Excavation Services, Inc.
5. The parties agree that the failure to pay any fine imposed by the Court may be treated as a breach of this plea agreement. Glen Wagner and Wagner Excavation Services, Inc. acknowledge that the failure to pay any fine may subject each of them to additional criminal and civil penalties under 18 U.S.C. §3611 et seq.
6. The parties agree that any term of supervised release or probation will incorporate the terms of the civil settlement agreement that is attached hereto as Exhibit "B". Any breach of the terms of the civil settlement agreement will also be deemed a breach of this plea agreement.

This letter sets forth the full and complete terms and conditions of the agreement between Glen Wagner and Wagner Excavation Services, Inc. and the United States Attorney for the Western District of Pennsylvania, and there are no other agreements, promises, terms or conditions, express or implied.

Very truly yours,



MARY BETH BUCHANAN  
United States Attorney

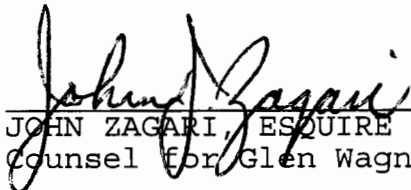
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I have received this letter from my attorney, John Zagari, Esquire, have read it and discussed it with him, and I hereby accept it and acknowledge that it fully sets forth my agreement with the Office of the United States Attorney for the Western District of Pennsylvania. I affirm that there have been no additional promises or representations made to me by any agents or officials of the United States in connection with this matter.

  
GLEN WAGNER


10/12/05  
Date

Witnessed by:

  
JOHN ZAGARI, ESQUIRE  
Counsel for Glen Wagner

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I have received this letter on behalf of the defendant, Wagner Excavation Services, Inc. As President of Wagner Excavation Services, Inc., pursuant to the corporate resolution, attached hereto and incorporated herein, I have been authorized and directed to appear on behalf of Wagner Excavation Services, Inc. as its designated authorized representative to formally enter a plea of guilty to the Information at Criminal Number 05-318. I have read the plea agreement and discussed it with the officers and directors of Wagner Excavation Services, Inc., and acknowledge that it fully sets forth the terms and conditions of the agreement between the Office of the United States Attorney for the Western District of Pennsylvania and Wagner Excavation Services, Inc. I affirm that there have been no additional promises or representations made to Wagner Excavation Services, Inc. by any agents or officials of the United States in connection with this matter.

  
GLEN WAGNER, PRESIDENT  
WAGNER EXCAVATION SERVICES, INC.

10-12-05  
Date

Witnessed by:

  
JOHN ZAGARI, ESQUIRE  
Counsel for Wagner Excavation Services, Inc.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	Criminal No.
v.	)	
	)	(29 U.S.C. § 666(e) and
GLEN WAGNER	)	18 U.S.C. § 2)
WAGNER EXCAVATION SERVICES, INC.	)	

INFORMATION

The United States Attorney charges:

On or about June 29, 2004, in the Western District of Pennsylvania, the defendants, GLEN WAGNER and WAGNER EXCAVATION, INC., employed an individual known to the United States Attorney as WP, who died as a result of the defendants', GLEN WAGNER and WAGNER EXCAVATION, INC., willful violation of standards promulgated pursuant to 29 U.S.C. § 655, namely 29 C.F.R. § 1926.652(a)(1), which requires employers to ensure that each employee in an excavation is protected from cave-ins by an adequate protective system designed in accordance with 29 C.F.R. § 1926.652(c).

In violation of Title 29, United States Code, Section 666(e) and Title 18, United States Code, Section 2.

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MARY BETH BUCHANAN  
United States Attorney  
PA ID No. 50254

**UNITED STATES OF AMERICA**

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

-----  
ELAINE L. CHAO, SECRETARY OF LABOR, :  
UNITED STATES DEPARTMENT OF LABOR, :  
Complainant, :  
v. : OSHRC Docket  
: No. 05-0032  
WAGNER DEVEL. CO., INC. & WAGNER :  
EXCAVATION SVCS., INC., :  
and its successors :  
Respondents. :  
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**SETTLEMENT AGREEMENT**

The parties, Wagner Development Co., Inc. and Wagner Excavation Services, Inc., ("Respondents") and Elaine L. Chao, Secretary of Labor, the United States Department of Labor, ("Complainant"), by their undersigned representatives, have reached a full and complete settlement of the above-referenced matter pursuant to 29 C.F.R. § 2200.100 of the Occupational Safety and Health Review Commission's ("Review Commission") Rules of Procedure.

Accordingly, the parties agree as follows:

1. The Review Commission has jurisdiction of this matter pursuant to Section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, et seq. (hereinafter the "Act").



work, of the exact location of any worksite where excavation work will be anticipated dates that such work will be ongoing. Respondents will not oblige by OSHA of any such worksites.

c. Respondents further agree to participate in a commitment aimed at educating employers on the dangers of excavation work and the importance of complying with OSHA excavation standards. In fulfillment of this commitment, Respondents will provide to OSHA an article for publication regarding the importance of complying with OSHA excavation standards. Respondents' community service commitment shall be fulfilled within thirty days of the resolution of all civil suits against Respondents arising out of the fatality that occurred on June 2, 2005. Respondents shall notify OSHA of the date on which all such civil suits are resolved.

4. Respondent withdraws its Notice of Contest to the Citations and the associated Penalty as amended by this Settlement Agreement.

5. Respondent will pay the total penalty of \$100,000.00 in accordance with the following schedule. Respondents will pay \$50,000.00 within thirty (30) days of the Stipulation and Settlement Agreement by the Administrative Law Judge. From the balance of \$50,000.00 over three years in accordance with the following schedule: the first payment, of \$1420.00, shall be due on the first day of the month following the initial payment of \$50,000.00. Each successive payment, of \$1388.00, shall be due on the first day of each succeeding month for the next 35 months. In the event that Respondent fails to make payment by the twenty-first day of the month in which payment is due, Respondent shall be in default and the entire unpaid balance immediately becomes due and payable.



work, of the exact location of any worksite where excavation work will be performed and the anticipated dates that such work will be ongoing. Respondents will not object to an inspection by OSHA of any such worksites.

c. Respondents further agree to participate in a public service commitment aimed at educating employers on the dangers of excavation work and the importance of complying with OSHA excavation standards. In fulfillment of this commitment, Respondents will provide to OSHA an article for publication regarding the excavation fatality that occurred on its worksite and the need to comply with OSHA excavation standards. This community service commitment shall be fulfilled within thirty days of the resolution of all civil suits against Respondents arising out of the fatality that occurred on June 29, 2004. Respondents shall notify OSHA of the date on which all such civil suits are resolved.

4. Respondent withdraws its Notice of Contest to the Citations and Notification of Penalty as amended by this Settlement Agreement.

5. Respondent will pay the total penalty of \$100,000.00 in accordance with the following schedule. Respondents will pay \$50,000.00 within thirty (30) days of approval of this Stipulation and Settlement Agreement by the Administrative Law Judge. Respondents will pay the balance of \$50,000.00 over three years in accordance with the following payment plan: The first payment, of \$1420.00, shall be due on the first day of the month following Respondent's initial payment of \$50,000.00. Each successive payment, of \$1388.00, shall be due on the first day of each succeeding month for the next 35 months. In the event that Respondent does not make payment by the twenty-first day of the month in which payment is due, Respondent is in default and the entire unpaid balance immediately becomes due and payable to OSHA.

2. Complainant amends the Citations and Notification of Penalty as follows:

a. Serious Citation Number 1

Item numbers 1 through 6 remain as issued, except that the penalty for each item is reduced to \$1,500.00. The total penalty for Citation No. 1 is \$9,000.00.

b. Willful Citation Number 2

Item numbers 1 through 7 remain as issued, except that the penalty for each item is reduced to \$13,000.00. The total penalty for Citation No. 2 is \$91,000.00.

3. The parties agree that this Settlement Agreement amends the Citations and Notifications of Penalty to include, as part of the agreed upon abatement, that Respondents will take the following actions:

a. Respondents will ensure that all employees, including managers, supervisors, and foremen, who are assigned to perform or supervise excavation work receive training in the requirements of Subpart P (Excavations) of Part 1926, 29 U.S.C. §§ 1926.650 – 652. Respondents will provide to the Pittsburgh OSHA Area Office documentation of such training and the names of employees trained within 60 days of the date of approval of this Settlement Agreement by the Administrative Law Judge. Respondents agree to comply with the requirements of Subpart P of Part 1926 in all future excavation work and to ensure that each employee in an excavation is protected from cave-ins by an adequate protective system in compliance with the requirements of 29 C.F.R. § 1926.652.

b. Respondents agree that, for a period of three years from the date of the Administrative Law Judge's approval of this Settlement Agreement, it will provide written notice to the Pittsburgh Area Office, at least seven working days before it begins excavation

The checks shall be made payable to "OSHA-Labor" and forwarded to the Pittsburgh OSHA Office at the following address:

William S. Moorhead Federal Building  
1000 Liberty Avenue, Room 1428  
Pittsburgh, PA 15222-4101

6. Respondent will post a copy of this Settlement Agreement in accordance with the requirements of 29 C.F.R. §§ 2200.100(c) and 2200.7 at \_\_\_\_\_ (location) on \_\_\_\_\_ 2005, so as to provide notice to all affected employees at the worksite.

7. The Citations and Notification of Proposed Penalty, as amended by this Settlement Agreement, and this Settlement Agreement shall become final Orders of the Review Commission and the parties consent to the entry of the attached Consent Order Approving Settlement.

8. This Settlement Agreement is entered into by Respondents in conjunction with plea agreements in which Glen Wagner and Wagner Excavation Services, Inc. have agreed to enter pleas of guilty to Count One of the Information at Criminal No. 05-318, charging them with violating 29 U.S. C. §666(e) and 18 U.S.C. § 2. Copies of the Plea Agreements and the Information are attached as Exhibits A and B to this Settlement Agreement.

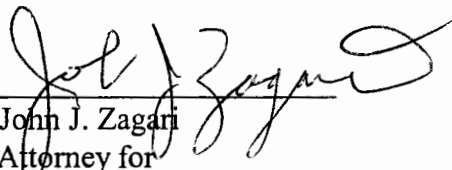
9. None of the foregoing agreements, stipulations, or actions taken by Respondents shall be deemed an admission by Respondents of any of the allegations contained in the citation. The agreements, statements, stipulations, and actions herein are made solely for the purpose of settling this matter economically and amicably without further litigation and shall not be used for any purpose except for proceedings and matters arising under the Occupational Safety and Health Act of 1970.

10. Respondents agree that this Agreement and the terms thereof shall be enforceable under Section 11(b) of the Occupational Safety and Health Act, 29 U.S.C. § 66(b). Respondents will not file any objection to the Secretary's filing of a Section 11(b) Order.

11. Each party agrees to bear its own attorneys' fees, costs, and other expenses incurred by such party in connection with any stage of the above-referenced proceeding including, but not limited to, attorneys' fees and costs which may be available under the Equal Access to Justice Act, as amended.

WAGNER EXCAVATION SERVICES,  
INC.

By:

  
John J. Zagari  
Attorney for

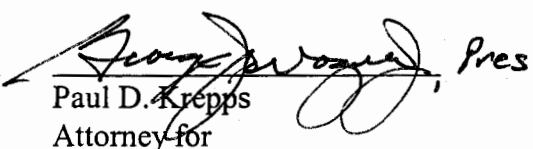
Wagner Excavation Services, Inc.

Dated:

10/12/05

WAGNER DEVELOPMENT CO., INC.

By:

  
Paul D. Krepps  
Attorney for

Wagner Development Co., Inc.

Dated:

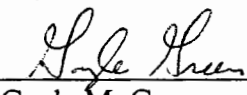
10-12-05

U.S. DEPARTMENT OF LABOR

Howard M. Radzely  
Solicitor of Labor

Catherine Oliver Murphy  
Regional Solicitor

By:

  
Gayle M. Green  
Attorney

Attorneys for Complainant

Dated:

8/19/05

UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

-----  
ELAINE L. CHAO, SECRETARY OF LABOR, :  
UNITED STATES DEPARTMENT OF LABOR, :

Complainant, :

OSHRC Docket

v. :

No. 05-0032

WAGNER DEVEL. CO., INC. & WAGNER  
EXCAVATION SVCS., INC., :  
and its successors

Respondents. :

-----  
CONSENT ORDER APPROVING SETTLEMENT

The parties advise that all matters in dispute have been amicably resolved and agree to entry of the order set forth below. It is therefore, ORDERED that:

1. The Settlement Agreement is approved and the terms thereof are incorporated into this Order.
2. The citations and proposed penalties are affirmed in accordance with the Settlement Agreement.
3. The total penalty associated with the affirmed citations amounts to \$100,000.00.

\_\_\_\_\_  
Judge, OSHRC

Dated:

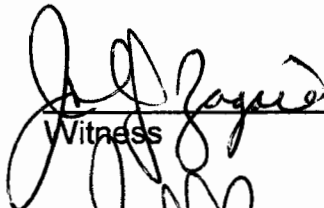
## Corporate Resolution of Wagner Excavation Services, Inc.

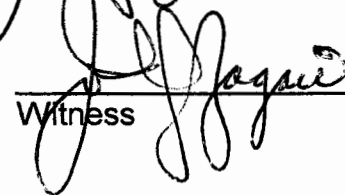
The Board of Directors and all shareholders have resolved the following:


1. The US Attorney's office of the Western District of Pennsylvania charged Wagner Excavation by information on October 5, 2005 at Criminal No. 05-318.
2. This Corporation was charged with 29 U.S.C. § 655, namely 29 C.F.R. §1926.652 (a) (1).
3. Glen Wagner is authorized on behalf of the Shareholders, Board of Directors and, Corporation to enter a plea of guilty, on behalf of the Corporation.

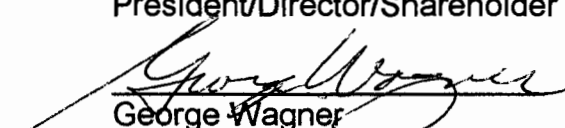
**FURTHER**, the officers of the corporation are instructed to take any and all necessary action on behalf of the corporation, to effectuate the above.

**RESOLVED**, that by the signing of this Resolution it shall constitute a full ratification thereof and a waiver of notice of the meeting by the signators.

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Glen Wagner  
President/Director/Shareholder

  
\_\_\_\_\_  
George Wagner  
Secretary/Shareholder